

HOPE NEWMAN-FOSTER
Claimant

LIFE CARE CENTER OF WICHITA
Respondent

ST. PAUL TRAVELERS
Insurance Carrier

ORDER

Respondent and its insurance carrier (respondent) requested review of the April 3, 2007 Post Award Medical Order by Administrative Law Judge (ALJ) Nelsonna Potts Barnes.

The Board has considered the record and adopted the stipulations listed in the Post Award Medical Order.

The ALJ held that the "claimant established that she is in need of additional medical treatment" as "a result of the original work injury and the natural progression of that condition."¹ The ALJ appointed Dr. Stein as the authorized treating physician to provide treatment, monitor the claimant's physical therapy and to refer her to a weight loss program. Respondent was also ordered to reimburse the claimant for the \$450.00 paid to Dr. Stein for his services and to pay \$875 in post award attorney fees.

¹ ALJ Award (Apr. 3, 2007) at 3.

Respondent maintains that the claimant has failed to establish that her present need for treatment is causally related to her 1999 work-related injury. Accordingly, respondent urges the Board to reverse the ALJ's Award with respect to further medical treatment, particularly the weight loss program. There is apparently no dispute as to claimant's entitlement to the payment for Dr. Stein's services (\$450), or for the post-award attorney's fees as that argument is not contained within respondent's brief to the Board. The respondent did not dispute the amount of the attorney fees, but did argue since there was no change an award of attorney fees was improper.

Claimant argues that the ALJ should be affirmed in all respects.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs, the Board finds the ALJ's Post-Award Medical Order should be affirmed.

Claimant suffered a compensable injury to her back on May 15, 1999 while working for the respondent. Claimant's treating physician, Dr. Trimble, recommended surgery and in January 2000, claimant underwent a partial discectomy. Claimant's condition improved, allowing her to return to work at an accommodated position and in August 2000 she settled her claim.

Claimant quit working for the respondent six months later and has worked for two other home health agencies since leaving the respondent's employment. These jobs allowed claimant to work within her restrictions, avoiding any lifting and twisting. Because one of claimant's home care clients was her mother, there were rare occasions that she would unintentionally violate her restrictions while helping with bathing and dressing. Despite working, claimant has gained approximately 50 pounds since her injury and she attributes this weight gain to her inactivity.

Since settling her claim, claimant has had sporadic periods of back spasms. And more recently, those spasms have become more frequent. In connection with this request for post-award medical treatment, claimant was evaluated by Dr. Paul Stein on July 17, 2006. Based upon his review of claimant's medical history and his examination, he concluded that claimant is in need of further medical treatment in order to relieve her increased low back pain. He recommends a long-term strengthening program coupled with a weight loss program. Together, these conservative methods will, in his view, take the stress off the injured L5-S1 disc and relieve claimant's ongoing complaints of pain.

When asked, Dr. Stein testified that without the weight loss program, any strengthening program would be ineffectual.² Thus, he recommended that both be undertaken in order to maximize claimant's pain relief, although he conceded that the weight reduction program would not "necessarily" be a direct and natural consequence of the original work injury.³ And when cross examined, Dr. Stein was asked the following:

Q. Doctor, there could be a variety of reasons for weight gain which might not have any relationship to this injury. Correct?

A. That is true.

Q. I mean, there could be some diabetic problem, it just could be general malaise, people get older, and it's been six years since the time of her surgery until you saw her. All of those are factors that could cause weight gain, correct?

A. Yes.

Q. Are you able to say -- you're not able to say within a reasonable degree of medical probability that the weight gain is due to the injury, correct?

A. No, unless there are no other factors involved.⁴

But at another point in his deposition, Dr. Stein was asked -

Q. . . . I guess my question is, would you have recommended -- had she come to you and weighed 190 pounds the same way as she weighed back before her surgery, would this still be a recommendation you might make for her, to be in a weight reduction program?

A. Yes.

Q. And you didn't have any evidence that she'd been suffering from either diabetes or malaise.

A. No.⁵

Claimant testified that she now misses work periodically and must take pain medication to address her low back pain. Claimant denies any subsequent work injuries, even when caring for her mother, although she admits there were times that she violated her restrictions by bending and twisting while helping to bathe or dress her. But for the last two years her mother has been confined to a nursing home and claimant's clients are all ambulatory and she no longer must do those activities. And her symptoms have become more frequent.

² Stein Depo. at 9-10.

³ *Id.* at 7.

⁴ *Id.* at 8.

⁵ *Id.* at 15.

There is no dispute that claimant is entitled to further medical care if she can establish that her present complaints are causally related to her work-related injury. K.S.A. 1997 Supp. 44-510(a) states in pertinent part:

It shall be the duty of the employer to provide the services of a health care provider, and such medical, surgical and hospital treatment, including nursing, medicines, medical and surgical supplies, ambulance, crutches, and apparatus, and transportation to and from the home of the injured employee to a place outside the community in which such employee resides, and within such community if the director in the director's discretion so orders, . . . as may be reasonably necessary to cure and relieve the employee from the effects of the injury.⁶

K.S.A. 44-510(a), as noted above, requires that employers provide such medical treatment as is "reasonably necessary to cure and relieve the employee from the effects of the injury." The case law interpreting this language has consistently found that the statute contemplates the employer being responsible for all treatment which relieves the employee's symptoms, arising from the injury.⁷

Here, the only medical testimony comes from Dr. Stein who is rather equivocal. At one point he says that claimant's weight gain and the need for a weight loss program is not causally related to the injury. But he also says that claimant requires a strengthening program and without the weight loss, the strengthening program will provide no benefit.

The evidence, when taken as a whole, is persuasive support for claimant's position and the ALJ's ultimate decision. Claimant is undoubtedly entitled to medical treatment that is reasonably necessary to cure and relieve her of the effects of her low back injury. Claimant has gained weight due to inactivity. Although respondent seems to want to suggest that the cause for this lies somewhere other than in claimant's injury and subsequent inactivity, there is no medical testimony or other evidence to support that theory. Under these circumstances, claimant requires the weight loss program so that the strengthening program can alleviate her low back pain. The ALJ's Order is affirmed in its entirety.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Post Award Medical Order of Administrative Law Judge Nelsonna Potts Barnes dated April 3, 2007, is affirmed.

⁶ The quoted language was inserted in K.S.A. 44-510h when K.S.A. 44-510 was repealed by the 2000 Legislature.

⁷ See *Carr v. Unit No. 8169*, 237 Kan. 660, 703 P.2d 751 (1985); *Horn v. Elm Branch Coal Co.*, 141 Kan. 518, 41 P.2d 751 (1935).

IT IS SO ORDERED.

Dated this _____ day of June 2007.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Joseph Seiwert, Attorney for Claimant
Christopher J. McCurdy, Attorney for Respondent and its Insurance Carrier
Nelsonna Potts Barnes, Administrative Law Judge